IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 138 OF 2006

Bombay Dyeing and Mfg.
Co.ltd ...Petitioner
vs.
Dattatraya Yashwant Waghdare
and anr. ....Respondents

Mr. V.P. Vaidya for the petitioner.
Mrs. S.N. Deshpande for respondent no.1.

CORAM: S.U. KAMDAR, J.
DATED: 20TH MARCH,2006.

P.C. :

1. The present writ petition is filed challenging the orders dated 5.3.2005 and 3.10.2005 being as Ex.K, M and N to the present petition. Some of the material

facts of the present case are as under :

2. The respondent no.1 was working as a Weighbridge Clerk in the clerical category and was chargesheeted on 29.4.2005 on the grounds of serious misconduct. Under the standing orders 12(d) the charges were of theft, fraud and dishonesty in connection with the business of the company. On 3.5.95 the respondent no.1 replied to the chargesheet and denied the charges levied against him and therefore a domestic inquiry was held. The respondent no.1 was dismissed from service on 31.7.95 after conducting the domestic enquiry. The respondent no.1 thereafter filed a complaint under MRTU & PULP Act, 1971 and alleged unfair labour practice under item no. 1(a), (b), (d) (f) (g) of Schedule IV of the said Act. After the pleadings were completed on 28.7.1997 the labour court passed an order holding that the inquiry was fair and proper. The said order was not challenged and the matter was proceeded further for determination of other issues including on the issue of gainful employment of the respondent workmen. On 12.6.2001 the said complaint was finally dismissed by the labour

court and the respondent no.1 filed a Revision Application No. 110 of 2001 before the Industrial Court at Bombay. The said Revision Application was dismissed by an order dated 11.07.2003. Being aggrieved by the said order the respondent no.1 filed a Writ Petition No. 7130 of 2003 in this court. The said matter was heard by the learned Single Judge of this court who passed an order interalia setting aside the said order dated 12.6.2001 and directed the labour court to hear the matter afresh from the stage of the final hearing of the said application before the labour court. The order dated 23.9.2003 specifically issued a direction which reads as under :

> " The Complaint (ULP) No. 287 of 1995 is, therefore, restored to the file of the Labour Court which shall proceed from the stage at which the matter was placed when the final order dated 12th June, 2001 was passed.

3. The matter was thereafter remanded back to the labour court who heard the matter and passed on order

dated 22.1.2004 allowing the complaint preferred by the respondent no.1 and granted reinstatement with full back wages and continuity of service. The petitioner herein filed a Revision Application No. 25 of 2004 against the order dated 22.1.2004. In the said Revision Application for the first time the petitioner moved an application dated 5.2.2005 inter-alia seeking to challenge the order dated 28.7.1997 by filing a seperate revision application. The Industrial Court has permitted filing of the said separate Revision application inrespect of the objections raised by the petitioner and ultimately by an order dated 5.3.2005 allowed the said application and the Respondent no.1 was permitted to challenge the order dated 28.7.1997 by filing a separate Revision Application. Accordingly the Revision Application no. 57/2005 was filed. The industrial court has allowed the said Revision application no. 57 of 2005 and set aside the order dated 28.7.1997 passed by the labour court holding that the inquiry is just and fair. In the light of the order passed in the said Revision Application the revision preferred by the petitioner challenging the order of reinstatement has been

rejected by an order dated 30.10.2005 which is Exhibit M to the plaint.

4. Learned counsel for the petitioner has contended that in the light of the order passed by the learned Single judge of this court the matter was restored at the final hearing stage as if the order dated 12.3.2001 was not passed and the matter was required to be proceeded therefrom. It has been contended that in the light of the aforesaid fact the order passed by the Industrial Court in permitting the petitioner to file a seperate revision application against the order dated 28.7.1992 and thereafter granting the same is totally baseless and without any merits. It has been further contended that it was not open for the Industrial Court to go behind the stage of the proceedings i.e prior to the order dated 12.3.2001. In as much as the order and direction of this court was to proceed from the final hearing stage and not at the anterior stage of the first part of the award as if the order dated 28.7.1997 is open for challenge.

5. Learned counsel for the respondent has on the other hand contended that the respondent was entitled to challenge the order dated 28.7.1997 irrespective of the fact that the single judge of this court has directed the matter to be proceeded with from the stage of the final hearing of the pending complaint before the labour court. It has been contended that in view of the fact that the order passed by the labour court on remand is challenged before the Industrial Court by the petitioner it became necessary for him to challenge the order dated 28.7.1997 before the Industrial court.

6. In my opinion the contention of the respondent cannot be accepted. firstly because the learned single judge of this court has directed that matter be proceeded with from the stage where the matter was, when the order dated 12.6.2001 was passed. The order passed by the learned single judge of this court in Writ petition no. 7130 of 2003 is specific and clear and in my opinion the Industrial court and the labour court were bound by the directions issued by this

court in the said Writ Petition. The direction passed by this court are binding on the labour court as well as the Industrial Court as they are courts of subordinate jurisdiction Apart from the aforesaid once the order is passed by the High court then the Labour Court and Industrial Court cannot pass any order contrary to and/or inconsistent with the same. The action on the part of the Industrial court to permit the respondent to challenge the order dated 28.7.1997 for the first time in 2005 in my opinion cannot sustain. It was open to the respondent no.1 to challenge the order dated 28.7.1997 if it felt that the said order is illegal or it was open for him to challenge the same after the matter is finally heard and if final order is passed against the respondent no.1 herein. In the present case the respondent no.1 has succeeded before the trail court and only because the Revision Application has been filed by the petitioner challenging the said order that the Respondent no.1 has preferred a revision challenging the order dated 28.7.1997. The exercise of jurisdiction by the Industrial Court in permitting the Respondent no.1 to file a Revision Application is thus

erroneous and without jurisdiction. The Industrial court cannot pass any order which are inconsistent with the order passed by the Learned single Judge of this court. In the present case after permitting the respondent no.1 to file a revision the said revision has been allowed and the order dated 28.7.1997 has been set aside. In view thereof the Revision Application preferred by the petitioner is also dismissed. In the light of the view which I have taken, in my opinion the present petition must succeed. Accordingly the present petition is made absolute. The order dated 3.7.2005 being Exhibit M and N as well as the order dated 5.3.2005 Exhibit K to the petition are quashed and set aside. The Revision Application No. 25 of 2004 is restored to file and remanded back to the Industrial Court to determine the same in accordance with law. The Revision Application preferred by the Respondent no.1 being Revision Application No.57 of 2005 is dismissed. The Industrial court is directed to hear and expedite the said Revision Application as expeditiously as possible. Petition disposed off accordingly. No order as to costs.

sd/-

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